

**MINUTES  
of the  
SECOND MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**July 20-21, 2015  
Pueblo of Taos, Dulce**

The second meeting of the Indian Affairs Committee was called to order by Senator John Pinto, co-chair, on Monday, July 20, 2015, at 10:28 a.m. at the Taos Pueblo Community Center.

**Present**

Rep. Sharon Clahchischilliage, Co-Chair  
Sen. John Pinto, Co-Chair  
Rep. D. Wonda Johnson  
Rep. Georgene Louis  
Rep. James Roger Madalena (July 20)  
Sen. Richard C. Martinez  
Sen. Cliff R. Pirtle  
Sen. Nancy Rodriguez (July 20)  
Sen. Benny Shendo, Jr.  
Rep. James E. Smith  
Sen. William P. Soules

**Absent**

Sen. Ted Barela  
Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Sen. John C. Ryan

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Carlos R. Cisneros (July 20)  
Rep. Patricia A. Lundstrom (July 20)  
Sen. Cisco McSorley  
Rep. Debbie A. Rodella

Sen. Stuart Ingle  
Sen. Daniel A. Ivey-Soto  
Sen. George K. Munoz  
Rep. Patricia Roybal Caballero  
Rep. Nick L. Salazar  
Sen. Clemente Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)  
Michelle Jaschke, Researcher, LCS  
Mark Edwards, Drafter, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, July 20 — Taos Pueblo Community Center**

### **Welcome, Invocation and Status Update**

Edwin Concha, lieutenant governor, Pueblo of Taos, gave an opening invocation. Senator Pinto then asked the committee members and the audience to introduce themselves. He then asked that Representative Clahchischillie chair the remainder of the meeting.

Lawrence Lujan, chief utility officer and council member, Pueblo of Taos, presented an update on the development of a water and wastewater system that is part of the Taos water rights settlement. Mr. Lujan noted that the water/wastewater project had received capital outlay funding in fiscal year (FY) 2013 and FY 2014, and planning and design of the project included analyses and public comment required pursuant to the National Environmental Policy Act of 1969. He said design is complete and the next step is to hire a contractor. He anticipates the project will be completed by the spring of 2016.

The committee then discussed the funding for the water rights settlement. A committee member stated that \$12.7 million was appropriated for the Taos water settlement in the 2015 capital outlay bill. The funding for this appropriation was predominantly for the purchase of water rights, with some money allocated for the purchase of water/wastewater infrastructure in Taos but outside of the pueblo. Mr. Lujan noted that Luis Romero, governor, Pueblo of Taos, and other officials from the pueblo were in Washington, D.C., for meetings regarding the federal portion of the settlement funding.

Explaining more about the need for a combined water/wastewater project, Mr. Lujan stated that the homes along Veterans Highway Road had been relying on drinking water wells, but some homes were built with septic systems and the area water table made the well water non-potable. The new system will provide service for all of the residents along Veterans Highway Road.

Next, a committee member asked about the status of a memorial for veterans from the Pueblo of Taos and noted that the funding approval would expire if not used, so renewal or extension may be critical so that the funds are not lost. Mr. Lujan reported that the monument stones are ready, but installation is awaiting final approval.

Ezra Bayles, director, Health and Community Services Department, Pueblo of Taos, updated the committee on the pueblo's senior center. He noted that the center was funded with capital outlay funding and is now seeking funding to refurbish its interior and increase handicap accessibility, to get a large transport van and to create a meals program for seniors.

### **Capital Outlay Requests: Pueblo of Santa Clara**

Before discussing the Pueblo of Santa Clara's current status, J. Michael Chavarria, governor, Pueblo of Santa Clara, raised a general concern about the direction of state funding for public infrastructure for Native American and rural communities. He stated that two funding sources, the Tribal Infrastructure Project Fund (TIF) and the Water Project Fund (WPF), are of significant importance to these communities. He further stated that the Pueblo of Santa Clara uses funding from the TIF to leverage additional federal and private funding for infrastructure projects.

Governor Chavarria noted that the 2015 capital outlay bill redirected \$2 million each from the TIF and the WPF for other purposes, primarily the Taos water settlement. Given these actions, he asked two related questions.

- 1) Will the 2015 appropriations out of the TIF and the WPF set a precedent for future capital outlay bills?; and
- 2) Will the legislature create an appeals process or some other mechanism to ensure that state funding is available to rural and Native American communities and not directed solely to urban centers?

Aside from the dedication of state funding, Governor Chavarria said that the process for moving funding for approved projects has become a serious challenge. Infrastructure funding is based on time-limited state bonds. If the funds are not spent and contracted for within the time limit, the funds are lost for that project. However, he indicated that the process to secure the funds, including planning documents, Department of Finance and Administration (DFA) questionnaires and approving intergovernmental agreements (IGAs), has become so lengthy that it puts projects in jeopardy. He requested that time deadlines for public infrastructure projects be adjusted so that the clock would not start running for a particular project until an IGA is in place.

Focusing on his pueblo, Governor Chavarria said that recent catastrophic wildfire and flooding events in the pueblo's watershed have caused approximately \$150 million in infrastructure damage and five presidential disaster declarations. To put the damage in context, he noted that the flooding and resulting siltation had damaged roads and commercial and public buildings, destroyed the existing water control and wiped out the fish population in Santa Clara Creek. Compounding the problem is the fact that the fires changed the geomorphic structure of Santa Clara Canyon, and future flood events are anticipated to result in river flows that will exceed four times the level of similar events prior to the fire.

As part of its recovery efforts, Governor Chavarria said the pueblo has been working with the Federal Emergency Management Agency, the Army Corps of Engineers, the Natural Resources Conservation Service and the Department of Housing and Urban Development (HUD). He highlighted two specific actions: 1) anticipating potential delays in federal or state funding, the Pueblo of Santa Clara has set aside \$5 million in a contingency fund to ensure that

recovery actions are initiated in a timely manner; and 2) the pueblo is seeking funding support for a flood prevention and disaster resiliency project through the HUD's National Disaster Resiliency Competition. If successful, the pueblo could receive up to \$20 million in grant money. He suggested that the state has a strong interest in having this be a successful effort and requested that the state build a partnership with the pueblo to make it happen.

The governor said that Secretary of Indian Affairs Kelly Zunie and Secretary of Homeland Security and Emergency Management M. Jay Mitchell had toured the pueblo, and Governor Chavarria extended an open invitation to committee members to be given a tour of Santa Clara's lands and a specific invitation to attend the pueblo's feast day on August 12.

The committee discussed TIF funding. A member noted that TIF funding represents 27% of infrastructure funding for tribal communities. Several members voiced a sentiment that the potential precedent set by the 2015 capital outlay bill should be addressed and negated. One member highlighted that the nature of the Taos water settlement meant that some of the redirected money will be used for non-Indian community water/wastewater service, thus heightening the concern about future TIF availability for tribal communities.

### ***Motion***

A motion was made by Senator Rodriguez and seconded by Senator Martinez for the committee to draft a letter asking that the redirection of funds out of the TIF to the Taos water settlement not create a general precedent for appropriating money out of the fund. **The motion was passed without opposition.**

The committee discussion then turned to other aspects of TIF funding. Two issues noted were that:

1) the time delays created by the approval process and securing the IGAs are potential challenges for all TIF projects; and

2) the funding source for the TIF itself is a concern. Legislation enacted in the 2015 regular session (House Bill 236) is designed to build the Severance Tax Permanent Fund, but it also will phase down the percentages going into dedicated funds. This was done in part because revenue projections for out years are not reliable.

### ***Motion***

A motion was made by Representative Louis and seconded by Senator Rodriguez to: 1) put an examination of TIF funding and timing issues on the agenda for the last committee meeting; and 2) invite the DFA and the Indian Affairs Department (IAD) to that meeting to comment on how to streamline the approval process or otherwise mitigate the time deadline challenge for TIF projects and to invite all of the tribal governments to that meeting. LCS staff was also directed to request an additional meeting day, if needed, to accommodate this agenda.

All tribal governments are to be invited to this meeting. **The motion was passed without opposition.**

Regarding the threat of forest fires faced by the Pueblo of Santa Clara and other communities, a member pointed out that the nature of New Mexico's forests is changing, with lower soil moisture content and higher elevation for reestablishment of mixed conifer forests. Governor Chavarria remarked that this change has created increased sediment transport by mountain streams into Cochiti Lake.

A committee member requested the minutes of the Tribal Infrastructure Board meetings for May 14 and 24, and notice for future board meetings. Moses Winston, general counsel and legislative coordinator, IAD, said the past meeting minutes would be provided to committee members and notice of future meetings would be sent to committee members.

### **Native American Taxation**

Peter Breen, Native American liaison, Taxation and Revenue Department (TRD), presented a quick overview of the judicial decisions and statutes concerning tribal sovereignty and jurisdiction. He cited *The Handbook of Federal Indian Law*, published in 1941 by former Assistant Solicitor for the Department of the Interior Felix S. Cohen, as the seminal work on tribal jurisdiction. Mr. Breen summarized the sometimes conflicting rulings by federal and state courts regarding the jurisdiction of tribal, state and federal law, including different analyses of criminal versus civil jurisdiction, what constitutes reservation land, the effects of rights of way over tribal lands for roads and utilities and the ability to levy taxes. (See handout for case citations.)

Mr. Breen said the traditional approach to sovereignty analysis was based on what was called the "territorial approach" (e.g., upon whose land did the action take place?). However, in 1982, the U.S. Supreme Court adopted an interest-based approach in a case cited as *Mescalero Apache Tribe v. Jones*, a case involving taxation for tribal properties that were both on and off the reservation. In another case decided in 1982, *Montana v. U.S.*, the U.S. Supreme Court ruled that a tribe may exercise civil authority over non-Indians when: 1) the parties have entered into a consensual relationship; or 2) jurisdiction is essential for the existence of the tribe. Mr. Breen indicated that the approach used in these rulings has proven to be challenging when applied to other situations and has resulted in jurisdictional gaps, though some of the issues raised have been addressed by federal statutes.

With regard to rights of way, Mr. Breen noted a divergence between the analysis of federal courts and New Mexico's state courts. He said the U.S. Supreme Court has indicated that rights of way are an implied diminishment of tribal sovereignty; however, the state courts have not applied that analysis within New Mexico.

Turning specifically to taxation practices within New Mexico, Mr. Breen said that the severance tax issue of double taxation raised by the 1988 U.S. Supreme Court case *Cotton*

*Petroleum v. New Mexico* had been resolved legislatively in favor of the tribes and that gross receipts taxes (GRT) are handled by IGAs. He said that GRT concerns are now focused on a lack of incoming revenue as opposed to jurisdiction.

Regarding potential future disputes, Mr. Breen said a recent regulation promulgated by the United States Bureau of Indian Affairs exempts activities on leased tribal lands from state taxation. He said that the regulation had been upheld by a district court in Florida, but is also being challenged in a case in Palm Springs, California, involving land leased from the Agua Caliente Band of Cahuilla Indians. Given the extent of leased tribal land within Palm Springs, Mr. Breen believes the eventual ruling in this case might ultimately prove to be the controlling decision.

Mr. Breen indicated two areas of legal uncertainty in New Mexico: 1) tribal jurisdiction for reacquired lands within reservation boundaries; and 2) the definition of "pueblo grant" in New Mexico statutes.

With regard to reacquired lands, he noted that pursuant to federal statute (Public Law 108-66), lands reacquired by the Pueblo of Santa Clara or the Pueblo of San Ildefonso are considered non-alienable. However, he did not know how the courts would interpret their character for tax purposes.

Mr. Breen indicated said that a broader issue is raised by the term "pueblo grant". He noted the term's use in statutes governing gas and tobacco taxes, but not in the statute governing GRT. He stated that it is not a defined legal term, and he indicated that the TRD and the Office of the Attorney General may have differing interpretations.

Responding to a question, Mr. Breen said that the "pueblo grant" terminology might have a large effect within the collection of tobacco taxes. He said that the TRD has taken a position on the breadth of the term, but would like to have a more precise definition. A committee member said that the issue would be brought up in the tax committee, but noted that it would not be considered germane legislation in the upcoming 30-day session. James Rivera, council member, Pueblo of Pojoaque, requested that tribes be consulted if this issue is going to be addressed by the committee. A committee member suggested that the All Indian Pueblo Council would be a good entity to solicit comment from on this issue.

### **Wildlife Restoration, Wildfire Recovery and the New Mexico Youth Conservation Corps (YCC)**

Jim Matison, restoration director, Wild Earth Guardians (WEG), stated that WEG started a program for watershed restoration and wildfire recovery in 1995. The program is funded through state, federal and private grants and has so far completed 50 projects in four states: New Mexico, Montana, Arizona and Colorado.

Mr. Matison highlighted a set of projects aimed at the restoration of the Valles Caldera watershed. The Valles Caldera program, started in 2013 as part of recovery efforts from the Las Conchas fire, has been funded through YCC grants. The crew in the YCC program ranges in age from 18 to 25 years old. For the Valles Caldera restoration effort, the program has hired 10 to 12 members from the Pueblo of Jemez annually, and seven crew members are now in their second or third year of the program. The program participants receive basic to intermediate training in various aspects of silviculture, including forest worker certification, chainsaw operation, class A and B sawyer certifications, first aid and CPR, fisheries monitoring, hydrology, erosion control and identification of plant species.

Samuel Heno, a program staffer and member of the Pueblo of Tesuque, elaborated on the value of YCC training for tribal members. He said that an important aspect is to combine the restoration skills and knowledge gained through the YCC with the cultural knowledge of the land within each tribe. He stated that one goal is to create work opportunities for tribal members through projects funded by the United States Forest Service's Collaborative Forest Restoration Program grants.

Mr. Matison said recovery work from the Las Conchas fire has included reseeded of burn areas, repair of pasture fences, contour filling in erosion areas, planting of native deciduous trees and removal of barbed wire fencing to promote elk calf migration. In addition, he highlighted an effort to redirect Redondo Creek into its historic channel to increase water retention in the stream.

Mr. Matison then showed before-and-after pictures of stream restoration projects from around the state. He said the restoration program has worked on many streams that suffered from lack of shady vegetation and increased temperatures, which often resulted in increased evaporation and fish kills. Stream restoration starts by improving the hydrological cycle by planting trees to provide shade, which leads to the in-migration of beavers. Beavers then create ponds and wetlands, slowing the flow of the stream. Slower flows allow heavy sediments to fall out and raise the local water table. That, in turn, leads to increased growth in riverine vegetation.

Responding to questions from committee members, Mr. Matison stated that New Mexico's YCC program is distinct from the Rocky Mountain Youth Corps. The YCC is a state grant program with a budget of \$3 million that funds 40 to 50 projects per year. Projects range from work on municipal parks, stream recovery, forest health and other efforts. In specific regard to the Valles Caldera recovery effort, he explained that timber is harvested on the caldera, milled into fencing lumber at the Walatowa timber yard at the Pueblo of Jemez and then used to create elk and livestock exclosure areas within the caldera to allow vegetation to recover.

A committee member asked if WEG's general stream restoration program includes wildfire prevention efforts as well as recovery projects. Mr. Matison said yes, the program included some small diameter forest projects as well. He also said the program had received approximately \$18 million in grant funding over the last five years.

**Recess**

Committee members were provided a tour of the Pueblo of Taos and then recessed at 3:45 p.m.

**Tuesday, July 21 — Dulce, Wild Horse Conference Room****Welcome, Invocation and Status Update**

Senator Pinto reconvened the committee at 10:10 a.m. Wainwright Velarde, council member, Jicarilla Apache Nation (JAN), gave an invocation, after which Senator Pinto asked the members of the audience and the committee members to introduce themselves.

Leon Reval, council member, JAN, welcomed the committee and said that the Jicarilla people originally settled in the area in the 1300s, and once numbered 10,000 people, but the current population is about 3,900 people. Next, Mr. Reval said Indian gaming, education, water resources, health care and the development of the Jicarilla Apache Nation Power Authority (JANPA) are important to the JAN.

Regarding tribal gaming operations, he stated that the JAN strongly supports the new gaming compact. Although it has relatively small gaming operations compared to some of the other tribes, the industry has created jobs and contributes to the regional economy. He said that the JAN currently operates a total of 200 class III slot machines, but no table games, out of three facilities: the Wild Horse Casino and Hotel, the Apache Nugget Casino (ANC) and the Jicarilla Travel Center.

Mr. Reval then turned to education issues. He stressed the importance of building a skilled and well-educated work force within the Jicarilla tribal community. He expressed a need to build native language and culturally connected curricula as methods for engaging and retaining students. He felt that this approach would achieve greater success than a testing and mandatory retention approach.

Speaking of water resources, Mr. Reval stated that the JAN had a negotiated settlement from 1992 for 40,000 acre-feet and is currently leasing some of its water to the City of Santa Fe. The JAN is also a partner in the Navajo-Gallup Water Supply Project and has pledged to provide the City of Gallup a 40-year lease for 7,500 acre-feet to be supplied by the project. He noted that a section of the project is designed to provide water to the southern portion of Jicarilla lands, although it may need some TIF funding.

Regarding health issues, Mr. Reval said that the JAN hopes to provide adequate dialysis care. Dialysis care requires three treatments per week, and patients had a minimum two-hour drive to reach the nearest dialysis unit prior to the JAN opening its own unit.



Finally, Mr. Reval touched upon the success of the JANPA, which was the result of a multi-year effort by the JAN to provide its own electric utility service instead of relying on a regional cooperative. The JANPA started providing service in the spring of 2014.

In response to questions about education, Mr. Reval said that the goal is to increase the number of leaders with college and advanced degrees. He also emphasized that Jicarilla children need to learn how to operate within both tribal and non-tribal cultures.

For the JAN Department of Youth (DOY), Robin Benedict, director, and Eldina Pesata gave a presentation. The DOY provides a variety of sports, arts and cultural programs throughout the year. The DOY participates in the National Youth Project Using Minibikes (NYPUM), which is a sport and motorbike safety program for teens and preteens founded in 1969. This is the only NYPUM program currently serving a Native American community.

For the Jicarilla Game and Fish Department, JC Knighthawk, director, and Kyle Taylor, staff biologist, gave a presentation. Mr. Knighthawk said that the department was established in 1952 to manage natural resources, but that mandate was expanded by a court ruling in 1982 that established the jurisdiction of tribes over their own wildlife. Mr. Taylor listed the key components for maintaining endangered species and game species populations as adequate water resources, a strong monitoring program and removing obstacles for migration. Mr. Taylor said that golden eagles and the roundtailed chub fish were the two endangered species of most concern. He said the department is known for its golden eagle recovery program and that it monitors the only existing population of roundtailed chub.

Regarding commercial game and fish populations, Mr. Knighthawk said that thousands of visitors come to fish the Jicarilla streams and hunt large elk, Merriam's wild turkeys and mule deer every year. The department has an extensive monitoring program to collar elk, pronghorns and migratory species, and it works in collaboration with the Ute Mountain Ute Tribe, the states of Colorado and New Mexico and other entities to determine migratory needs.

Frances Garibay, director, JAN Senior Citizens Center, said that her agency has 13 staff members and provides services, including transportation, meal service and health care. She said that the annual Spam carving contest is particularly popular. The program currently has 80 homebound clients. Although 70% of the program's funding is internally provided by the JAN, the rest comes from federal and state grants, so a significant portion of staff time is dedicated to grant applications. She noted that \$500,000 in state capital outlay funding helped build the current senior center. The program's current needs include a new heating and cooling system for the senior center, a new kitchen facility and vans to deliver heated meals for homebound clients.

John Wheeler, general manager, JANPA, said Dulce's electric service had been provided by the Northern Rio Arriba Power Cooperative (NORA), but that system relied on an old power line that was subject to frequent outages, and the NORA had a moratorium on new growth. The need for expanded and reliable service was the impetus to create the JANPA. It now employs 21

people, including 13 Native Americans, 11 of whom are Jicarilla Apache tribal members. The JANPA expects to be financially self-sufficient within five years.

The JANPA is currently negotiating with the Jemez Mountains Electric Cooperative (JMEC) to take over service for the southern part of the reservation along Highway 550. Within five to 10 years, the JANPA will own a state-of-the-art distribution system.

Responding to questions about the JANPA's relationships with the neighboring electric cooperatives, Mr. Wheeler said that all negotiations with the NORA had been settled and that the JMEC had its own reasons to negotiate with the JANPA. The JMEC currently has lines running over Jicarilla land without right-of-way agreements and faces considerable cost increases. He indicated that the negotiations have been amicable.

Chad Eaton, chief executive officer, ANC, and Melissa Eaton, director, Jicarilla Gaming Commission (JGC), presented on the JAN's gaming operations and regulation. The ANC operates three facilities and employs 148 people, only 31 of whom are non-Native American. The JGC ensures compliance with federal and tribal regulations concerning alcohol sales, audits of the facilities, surveillance of gaming areas, employee drug testing and testing of slot machines.

Lyle Atole, commander, JAN Veterans Group (JAN Vet), said that there are more than 400 Jicarilla Apache veterans, approximately 10% of the Jicarilla Apache population, and that the main needs for veterans are physical and mental health care, transportation to access health care, housing and house remodeling. JAN Vet works with other groups to tackle those needs. Commander Atole said two years ago the JAN Tribal Council established a Warriors Day observance to make sure that each veteran is personally thanked for his or her service.

Senator Martinez, co-chair of the Military and Veterans' Affairs Committee, issued an invitation to JAN Vet to give a presentation to that committee.

#### **Update from the Human Services Department (HSD): Availability and Accessibility of Services and Overview of the Supplemental Nutrition Assistance Program (SNAP)**

Sean Pearson, deputy secretary, HSD, Priscilla Caverly, tribal liaison, HSD, and Theresa Bellanger gave the presentation. Mr. Pearson said that the HSD has three Native American liaison officers: Priscilla Caverly for the Income Support Division (ISD) and Child Support Enforcement Division, Theresa Bellanger for Medicaid and Centennial Care and Barbara Alvarez for the Behavioral Health Services Division (BHSD). Ms. Caverly and Ms. Bellanger then briefly summarized a number of assistance programs run through the HSD and the department's tribal communication and cultural training programs.

Ms. Bellanger said Native Americans enrolled in Medicaid may choose a fee-for-service program or a managed care program through Centennial Care. She said that a client must opt in to the Centennial Care program. Centennial Care coordinates services for medical and behavioral health. Some of the advantages for a client in Centennial Care are benefits for

traditional healing care and rewards for healthy habits such as getting regular exams and dental checkups. She said Centennial Care tries to create partnerships with tribal governments, and she cited the audiology services at the Pueblo of Zuni as an example. Currently, 118,127 Native American New Mexicans are enrolled in Medicaid: 87,731 in the fee-for-service program and 30,396 in Centennial Care.

Ms. Caverly said that the HSD has various memoranda of understanding (MOUs) with tribal governments and organizations allowing the ISD to have workers placed in five different communities across New Mexico and the Food Distribution Program on Indian Reservations (FDPIR) to work in multiple locations.

Ms. Caverly further stated that three MOUs are being developed for the Temporary Assistance for Needy Families (TANF) Program. (See page 6 of the HSD handout for specific locations for the ISD, FDPIR and TANF.) She also noted that 30,000 children receive meals at school each day through the program, and the Food and Nutrition Service of the United States Department of Agriculture (USDA) provides 60% of the cost. (See addendum B of the HSD Liaison Report handout for statistics on income assistance by tribal affiliation.)

The Child Support Enforcement Division supplies legal assistance, but only works with tribes at their invitation. The division has 334 active cases. Child support collections exceeded \$3 million in fiscal year 2015. The BHSD augments mental health and substance abuse services provided through Medicaid, which is a \$3.4 million program. (See addendum C of the HSD Liaison Report handout for specific information regarding BHSD services for each tribe.)

Page 9 of the HSD Liaison Report handout lists a number of departmental efforts regarding cross-cultural training and collaboration policies. Ms. Caverly highlighted that eight hours of cultural competency training are now required for all HSD employees, and that all managers receive additional training on the HSD's communication, collaboration and consultation policy and the State-Tribal Collaboration Act. Further, about half of New Mexico's tribal communities are represented on the Native American Technical Advisory Committee (NATAC). The NATAC meets bi-monthly and gives interested persons an opportunity to meet directly with the Medicaid director.

Turning to the issue of the HSD's proposed work requirements for SNAP, Mr. Pearson was joined by ISD Director Marilyn Martinez. Mr. Pearson said that participation in SNAP increased 12.8% from 2014 to 2015 and that there are now 87,000 Native American participants in the program. He said that the SNAP proposals were built off of the federal education and training (E and T) requirements, and that the goal is to move people off of SNAP. He said that the HSD is working with the Workforce Solutions Department (WSD) to avoid duplicating E and T programs. He explained that SNAP participants may be divided into two separate populations: able-bodied adults without dependents (ABAWDs) and non-ABAWDs.

Mr. Pearson said that the SNAP rules were proposed on May 29, 2015, with anticipated implementation dates of October 1, 2015 for ABAWDs and March 1, 2016 for non-ABAWDs. He believes the proposal has built-in mechanisms that mitigate what might be harsh outcomes. Since the proposal, the HSD has held public hearings and sponsored two roundtable discussions with tribal leaders and the executive managers from the HSD as participants. He said that case managers would have flexibility to determine exceptions for good cause on a case-by-case basis. Case managers may make individual assessments as to what constitutes acceptable work activities, and the HSD can make geographic waivers based on local unemployment rates. Mr. Pearson further emphasized that the unemployment methodology differs for participants without dependents and those with dependents.

In response to a comment about limited HSD staffing and training, Mr. Pearson said that the vacancy rate for the support divisions was about 10%, but that the HSD created a computer program for staff training that allows for minimal staffing disruption. A further concern was raised by the condition of the HSD facility in Espanola. Mr. Pearson stated that capital outlay funding had been secured for rehabilitation of the building.

Further discussion about SNAP was then postponed until after the next presentation.

### **Proposed Expansion of Mandatory Work Requirements**

Sovereign Hager, staff attorney for the New Mexico Center on Law and Poverty, said that the HSD's SNAP proposal would expand work requirements beyond the federal requirements to three separate populations: minors over the age of 15 who are in school; parents with children over six years old; and adults between the ages of 50 and 60 years old.

Ms. Hager said that the proposal would create additional responsibilities for an agency that already had challenges providing adequate notification to assistance program participants. She questioned whether the ISD has the capacity to administer the new regulations. She said that the burden of mishandled cases would fall on people who have few resources to address bureaucratic mistakes.

Ms. Hager also noted that the All Pueblo Council of Governors opposes the proposed SNAP regulations.

In response to a member's question, Mr. Pearson said that the HSD is expanding its requirements beyond the federal regulations with the goal to break a cycle of dependency and to move people into the work force.

When asked about the number of participants in SNAP and the resulting caseload for ISD staff, Ms. Martinez said that the current number of people covered by the work requirements within SNAP is 20,000, but the number is projected to grow to 70,000. She said the department is proposing a rolling enrollment to help accommodate the increase. The HSD has 980 caseworkers, has contracted with SL Start for 80 staffing positions and is coordinating with the

WSD to help handle the caseload. She said that historically, caseworkers each handle 700 to 1,000 cases. A concern was raised that if a significant portion of SNAP participants applied for exceptions, HSD staff might not be able to review them all.

Ms. Hager said many states have adopted a volunteer program specifically because of the numbers involved. She also questioned whether New Mexico has a cycle of dependence problem, stating that 85% of participants go back to work after receiving SNAP assistance.

Regarding the training that would qualify as part of the SNAP work requirements, Ms. Martinez said that would be determined individually based on what a given participant can do and what they need — résumé assistance, placement or other services. She said that two orientations per year are planned for each of the 34 offices around the state, but that if people are unable to reach an orientation session because they live too far away, they would qualify for a good cause exception.

Mr. Pearson said that the geographic unemployment exception would apply to areas with unemployment above 10%.

A committee member said that unemployment data do not capture information about out-migration, and without it, the unemployment figure alone may create a false picture of the job market.

Ms. Martinez said that there was one public hearing held in Santa Fe on July 17, but that the HSD also accepted comments made by phone and by email. The department responses will not be done until mid-August. A committee member raised a concern that the affected population has limited access to the internet to send in comments. Ms. Martinez said that comments can also be made directly to the USDA's Food and Nutrition Service, which had a representative at the public hearing.

Mr. Pearson said that if the federal agency denies the state's proposal, then the status quo will remain in effect. However, he believes it is more likely that only small changes would need to be made.

Asked if there is a requirement to do a cost-benefit analysis for the proposed regulations, Mr. Pearson answered no. However, the HSD has done a cost analysis that will be posted on its web site and sent to the committee, but it has not done a benefit analysis. The HSD is also looking at some of the options that other states have established to qualify as work activities.

Regarding program accountability, Mr. Pearson said that the HSD is audited every couple of months by the USDA on several of the programs that it administers, including SNAP. He said he could provide the letter of findings from the USDA to the committee.

A committee member then asked about how the HSD's other service programs are allocated around the state. Mr. Pearson indicated that it depends on the service. Child support services are court-mandated, Medicaid services depend on the eligible population and behavioral health services are sometimes driven by grant approvals. Once a provider has established a service, those contracts are often maintained as long as they demonstrate that they are continuing to provide that service. Asked specifically about behavioral health budgets, Mr. Pearson said he would provide them to the committee.

When asked if Fort Sill was included within the addenda to the HSD Liaison Report handout, Ms. Martinez said the data system needed to be updated and that the Fort Sill information is still combined into the "unknown" category used for out-of-state tribes.

### ***Motion***

Representative Smith moved to approve the minutes of the June meeting. Senator Shendo seconded, and the minutes were approved without objection.

### **Public Comment**

Darlene Gomez, general counsel for the JAN, listed six issues within the Jicarilla community that she said are implicated by the proposed regulations for SNAP:

- 1) a complete lack of available child care;
- 2) a job market where for every minimum wage job available, 20 to 30 people apply;
- 3) the unemployment rate;
- 4) the unavailability of public or private transportation;
- 5) an unreliable communication network that periodically disables phone and internet access for the tribal government as well as individuals; and
- 6) a SNAP office that is sometimes unresponsive.

### **Adjournment**

There being no further business before the committee, the meeting adjourned at 4:38 p.m.